



DESCRIPTION OF EXECUTIVE ORDER #50

Attention North Carolina resident vendors:

Pursuant to G.S. 143-59 and Executive Order No. 50 (issued February 17, 2010, entitled "Enhanced Purchasing Opportunities for North Carolina Businesses"), a North Carolina resident Vendor may receive an opportunity to obtain an award by agreeing to match the final price(s) of the lowest Vendor on a Contract for the purchase of goods, if that lowest price is offered by a non-North Carolina resident Vendor. This opportunity arises when a North Carolina resident Vendor offers a price that is the lowest among all bids by a qualified in-State resident Vendor and also is within five percent (5%) or \$10,000 (whichever is less) of the non-resident Vendor's overall lowest price. This price-match opportunity applies to a Contract awarded under this solicitation.

G.S. 143-59(c) (1) defines a "resident Vendor" as a "Vendor that has paid unemployment taxes or income taxes in this State **and** whose principal place of business is located in this State." All other Vendors are considered to be non-resident Vendors. G.S. 143-59(c)(3) defines a "principal place of business" as the "principal place from which the trade or business of the Vendor is directed or managed." This refers to overall operations for the entire business entity, not merely a division or office location.

In order to qualify for this opportunity, a resident Vendor shall complete the [VENDOR PRICE MATCHING OPPORTUNITY FORM](#) and submit it with the proposal packet. The Certification may not be submitted after the public opening of the bids. By executing the Certification, the Vendor affirms that the information provided is accurate and agrees to provide any additional information or documentation requested by the State to confirm the above certifications and statements within five (5) business days of request (including but not limited to income tax or unemployment tax returns, reports and/or filings (annual and/or quarterly); banking statements or financial/accounting statements reflecting Vendor's payment of income taxes or unemployment taxes to the State of North Carolina and such other information regarding Vendor's management or directors of its business or trade of its principal place of business).

Requesting a price-match opportunity below does not require any resident Vendor to match the lowest price in the event a Vendor qualifies for receiving the opportunity.

The State will evaluate the bids in accordance with the award criteria stated in this IFB to determine the lowest Vendor meeting the requirements of the IFB without regard to any Vendor's residency. If the Vendor with the lowest price is a North Carolina resident Vendor, then no consideration of the price-matching procedure is necessary. If the lowest bid by a Vendor meeting all requirements was submitted by a non-resident Vendor and there are no North Carolina resident Vendors that submitted a price bid that was within 5% or \$10,000 of the non-resident Vendor's price, then none of the North Carolina resident Vendors qualify for the price-matching opportunity and no review of a resident Vendor's Certification is required.

If the lowest price bid by a Vendor meeting requirements was submitted by a non-resident Vendor and there are one or more North Carolina resident Vendors that submitted a price bid that was within 5% or \$10,000 of the non-resident Vendor's price, then the State will determine if the Vendor has requested a price-matching opportunity, review the Certification(s) of the resident Vendor(s) to determine whether the resident Vendors have properly executed the Certification and ensure that the information and documentation provided in or with the Certification or otherwise submitted to the State supports the resident Vendor(s) qualification to exercise the price-match opportunity. The State may seek clarification of the Certification and/or information in a resident Vendor's Certification and request additional information and documentation, if needed. If any resident Vendor's award is challenged in a bid protest, based on the accuracy of that Vendor's claim of qualification for the price-matching, the resident Vendor shall provide additional information and/or documents to the State within five (5) business days of receiving a request from the State for such information and/or documentation, or its award shall be subject to cancellation.

Pursuant to G.S. 132-1.1, 105-259(b) and the pertinent reference in the [Instructions to Vendors](#), the State is prohibited from making public disclosure of the Vendor's tax information and documents submitted (subject to those exceptions set out in G.S. 105-259(b)) and the State shall preserve the confidentiality of the tax information and/or documents received in response to a request for clarification or to resolve a bid protest challenging a resident Vendor's qualification for the price-matching opportunity in accordance with applicable law. In order to further preserve the confidentiality of any Vendor's tax information and documentation provided to the State, the Vendor shall comply with the pertinent reference in the [Instructions to Vendors](#) and mark "CONFIDENTIAL" at the top and bottom of each page of such information and documentation. After review of all relevant material, the State shall include in its recommendation for award a finding that the North Carolina resident Vendor(s) is or is not qualified for the price-matching opportunity.

If more than one North Carolina resident Vendor qualifies for the price-matching opportunity, then the State will prioritize the qualified North Carolina resident Vendors according to the prices bid, from lowest to highest, so that the qualified North Carolina resident Vendor that submitted the lowest bid receives the first opportunity to match the bid price of the lowest non-resident Vendor that met all IFB requirements. If the lowest qualified North Carolina resident Vendor that met all IFB requirements declines to accept Contract award, then the Contract will be offered to the next lowest qualified North Carolina resident Vendor meeting all IFB requirements and continue in this manner until either a qualified North Carolina resident Vendor accepts the Contract award or the award is made to a non-resident Vendor if no qualified North Carolina resident Vendor agrees to match the lowest price bid.

If two resident Vendors qualify for the price-matching opportunity, and both score the same on price, then the State may: (1) consider the information provided in those Vendors' Certifications or publicly available information to determine with which Vendor the Contract award would have a greater impact of stimulating or sustaining the North Carolina economy and/or is most likely to create or save jobs (e.g., if the choice is between a resident broker and a resident manufacturer of the subject goods, then the Contract will be awarded to the resident manufacturer); (2) consider the unemployment rates in the municipality or county where each Vendor's principal place of business is located; (3) seek clarification from the Vendors to ascertain the impact on their respective businesses if offered the award of the Contract; or (4) utilize any other approved method of deciding between equal bids.

If a resident Vendor requests and qualifies for the price-matching opportunity, the resident Vendor will be notified of its opportunity to agree to match the lowest price and receive Contract award, and it will have two (2) business days from the date and time of such notification to indicate its response, either agreeing or declining to match the lowest responsible non-resident Vendor's price and receive the Contract award based on that price match. If the IFB requests bids on alternative configurations or components, then the price match shall apply to the actual alternative chosen by the State.

If at any time during or after the procurement process (including but not limited to clarifications and resolution of bid protests) the State determines that: any certifications or information in the Certification is false, substantially inaccurate, materially misleading or that the Vendor failed to provide, within the specified time period, any additional information requested, then the State may:

- (1) Cancel any award, Contract and/or purchase order that was awarded to such Vendor based on the price-matching opportunity, and the resident Vendor shall be liable for all costs incurred as a result of the cancellation, including any increased costs the State may incur as a result of awarding the Contract to another Vendor; and/or
- (2) Take action against the Vendor under the False Claims Act, G.S. 1-605 through 1-617, inclusive, for submitting a false Certification for the price-matching opportunity under Executive Order #50 (including but not limited to treble damages and civil penalties).